IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

:::

JUDGMENT

LR's of Late Sundermal @ Sunder Dass
vs.
Himmat Singh and another.

S.B.CIVIL SECOND APPEAL NO.56/1987 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 10.3.1987 PASSED BY SHRI RAMNARAIN SINGH, ADDITIONAL DISTRICT JUDGE NO.1, SRI GANGANAGAR IN CIVIL APPEAL NO.72/1980.

DATE OF JUDGMENT ::: 24.3.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. H Srimali, for the appellant.

Mr. V Agarwal, for the respondents.

- - - - -

BY THE COURT:

Heard learned counsel for the parties.

This second appeal is against the judgment and decree of the trial court dated 17.3.1980 by which the suit for specific performance of contract filed by the plaintiffs/ respondents was decreed and dismissal of the appellant's appeal by the appellate court vide judgment and decree dated 10.3.1987.

This appeal was admitted by this Court on 19.6.1987 but without framing any substantial question of law. The appeal was listed before this Court on 9.1.2006 for orders on application under Order 22 Rule 3 CPC. At that time, this Court found that the substantial question of law has not been framed, therefore, to give opportunity to the appellant to show the involvement of substantial question of law in this case, the matter was ordered to be listed for admission, therefore, heard learned counsel for admission of the appeal.

Brief facts of the case are that the plaintiff entered into agreement for purchase of certain agriculture land consisting of several kill numbers of one Murabba No.46. The sale agreement was executed on 14.5.1966 and total sale consideration was Rs.7,225/- out of which Rs.6,000/- was paid by the plaintiff to the defendant no.1 and possession of the agriculture land was delivered to the plaintiff by the defendant no.1. However, because of some reasons, the part of the land in question was exchanged by the defendant no.1 with the defendant no.2. The possession of the said exchanged land was also delivered by the defendant no.1 to the plaintiff. The defendant no.1 did not execute the sale deed, therefore, the plaintiff filed the suit for specific performance of contract. The defendants raised several pleas including the plea that since the land, for which the agreement was executed, no more vest in the defendant no.1, therefore, the suit for specific performance of contract cannot be decreed. The two courts below rejected the

defendant's said plea and decreed the suit of the plaintiff for specific performance of contract and of which possession has already been delivered to the defendant no.1. The courts below also decreed the suit for the land which the defendant no.1 took in exchange from the defendant no.2.

Learned counsel for the appellant submits that the exchanged land is not the land covered by the agreement, therefore, no decree can be passed.

I have considered the submissions of learned counsel for the parties and perused the reasons given by the two courts below.

It is not in dispute that the defendant no.1 agreed to sell the land and thereafter, gave the possession of the land to the plaintiff after taking consideration as back as in the year 1966. The possession of the land has also been delivered to the plaintiff by the defendant no.1, even of the exchanged land. The defendant, if was in possession of any part of the land after the agreement to sale, he was holding the property in trust to the plaintiff only and in case, he got some alternate land by mutual agreement between the defendant no.1 and the defendant no.2 and thereafter, handed over the possession to the plaintiff, then that clearly is implied contract by which the defendant no.1 agreed to transfer the exchanged land to the plaintiff.

Learned counsel for the appellant also submitted that the defendant cannot transfer the land in view of the statutory bar contained in Rule 102 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955. According to learned counsel for the appellant, before the transfer of the land for allotment, sanad is a condition precedent.

It goes without saying that any formality for effecting the transfer is a implied condition in sale agreement for sale of immovable property. If sanad has not been granted yet, it is the duty of the seller to obtain the sanad from the competent authority and thereafter, execute proper deed transferring the title. Learned counsel for the respondents submits that the Rules of 1955 have been repealed and now there is no restriction for transfer of land.

So far as this suit is concerned which is a suit for specific performance of contract and when the requirement of taking the requisite sanad etc. is implied condition of the agreement then in that case, agreement can be enforced.

In view of the above discussion, this appeal, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya